

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between:

FRATERNAL ORDER OF POLICE,
LODGE No. 5 (Union)

-AND-

**AWARD
AND OPINION**

CITY OF PHILADELPHIA, PA
(City)

Docket No. 14 390 01141 10
(P/O Andre Boyer, PR# [REDACTED] Twenty-day (20) Suspension.)
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BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES: For the Union: STEPHEN J. HOLROYD, ESQ.
JENNINGS SIGMOND, P. C.

For the City: DIANE A. LOEBELL, ESQ.
SENIOR ATTORNEY

ISSUE: Was the twenty-day (20) disciplinary suspension of P/O Andre Boyer PR# [REDACTED] for just cause and if not, what shall be the remedy?

PRELIMINARY STATEMENT

Having been selected in accordance with the provisions of the Collective Bargaining Agreement between the above parties, I conducted an arbitration hearing on March 30, 2011 at the offices of the American Arbitration Association in Philadelphia, PA, at which time the parties were afforded an opportunity to present evidence and argument in support of their respective positions.

Post-hearing briefs from both parties were timely received and considered herein.

BACKGROUND

P/O Andre Boyer, PR# [REDACTED] the grievant herein, received a twenty-day (20) disciplinary suspension for Conduct Unbecoming an Officer Section 1.15: and Disobedience of Orders, Section 5.15: The Specifications in the Notice of Suspension Without Pay are in relevant part as follows:

CONDUCT UNBECOMING AN OFFICER, Section 1.15: Knowingly and willfully making a false entry in any Departmental report or record.

In that Internal Affairs investigation IAD #08-1076 determined that you continuously and repeatedly placed inaccurate information on official documents created in the process of completing district level, small amount marijuana arrests. It is mandatory that all police reports be totally accurate, and if information is not known, it is incumbent upon the preparing officer to obtain factual information. An audit of arrests for district level marijuana usage or possession showed that there were fifty-three arrests that no field test was performed on the narcotics seized when a field test was required. ~~You falsely entered your payroll number in the PARS reports to indicate that you conducted a field test, and you incorrectly indicated on the property receipts that the narcotics were tested and tested positive for the presence of illegal substances. In addition, the audit showed that on ten arrests, you entered your payroll number in the PARS reports as being the investigator who field tested the narcotics when the field testing was done by someone else..~~

DISOBEDIENCE OF ORDERS, Section 5.15: Failure to follow Departmental procedures for the handling of evidence, personal effects, and all other property taken into custody.

In that Internal Affairs investigation IAD#08-1076 determined that you failed to submit' narcotics evidence immediately upon seizure for DC# [REDACTED] and DC# [REDACTED]. In the case of DC# [REDACTED] generated on 03/03/08, the PARS report indicates that you conducted a positive drug test on marijuana with property receipt # [REDACTED] identifying the drugs as contaminated. However, the drugs six partially burnt marijuana cigars, were not submitted until seven days after they were seized. In the case of DC# [REDACTED] generated on 03/05/08, you seized a glass container with narcotic residue and maintained possession of this container until 03/10/08. This is a violation of Directive 91, Property Taken Into Custody, Section VI-A-1-C, which states, "Narcotics will be immediately taken to the Chemical Laboratory by the confiscating police officer, or temporarily stored in the divisional locked safe box.(C7)

A demand for arbitration was made by FOP Lodge #5 dated 7/14/2010 claiming that "Police Officer Andre Boyer Payroll Number [REDACTED] was suspended for twenty days without just cause."(Jt.1) A make whole remedy for all losses is requested.

POSITION OF THE CITY

The City argued in relevant part that the grievant knowingly and willfully made false entries in Departmental records, which is a violation of Code Section 1.15. In support of this position the City introduced Lt. Baldini who under oath testified, in part, that of the 127 of his arrest records she examined, involving district-level marijuana, less than half were accurate. She further stated that she found 53 investigation reports in which the grievant's employee number was entered in the Police Arrest Report System (PARS) indicating that he had

conducted narcotic field tests when no field tests were actually conducted. She also found ten incidents where his employee number appeared on the PARS even though the substance was properly field-tested by a certified individual. There were also two incidents when evidence was not taken to the lab as promptly as required.

The City further pointed out that, although the grievant maintained that these incidents were merely minor deficiencies, if the arrested individual went on trial the false entries in the grievant's arrest records could threaten the DA's ability to successfully prosecute the offender or resulting in the framing of suspects. Although false testimony was not found, the false entries are serious breaches of his obligations to create accurate arrest records and narcotic test reports.

Additionally, the City also argued that even more serious was the violation Code Section 5.15 when at least on two occasions he intentionally failed to submit narcotics evidence immediately upon seizure.(C2 and C4)

The City urged that for the reasons set forth above Officer Boyer's suspension was for just cause and his grievance should be denied in its entirety.

POSITION OF THE UNION

The Union argued in part that there is no just cause to discipline the grievant. It pointed out that the grievant is an extremely aggressive officer with 900 arrests during the almost two year period in question herein, including 221 narcotics arrests and 127 District level marijuana usage/possession cases. The Union also pointed out that these improperly executed reports needed to be approved by supervisors but the grievant was never directed to change his practice. This was a "breakdown in supervision" as concluded by Lt. Baldini of IAD who investigated the issue herein.

The Union insisted that the grievant merely entered his payroll number in order to process his report in the flawed system. It is therefore unfair to discipline an employee for merely doing what the flawed ruled required him to do. Here the City fixed the system but found him guilty of a crime and suspended him severely for a first offense. In this regard the Union pointed out that the PBI after hearing the case unanimously recommended a six-day (6) disciplinary suspension but the Commissioner, without additional facts, elected to increase the penalty to twenty-days.

The Union asked that at least the arbitrator return the fourteen days (14) to the grievant and correct his record to reflect the discipline imposed by the PBI.

DISCUSSION AND OPINION

It is generally accepted in arbitration that in disciplinary cases the Employer has the burden of proving by a preponderance of the credible evidence that a punishable transgression has occurred.

Disciplinary action, such as an extended suspension without pay, must be analyzed in the context of the particular circumstance and the fact pattern associated with the specific transgression. In determining whether the "punishment fits the crime" a number of factors must be considered, including, the nature and the frequency of the transgression, the practice in this particular work environment and any other circumstance related to the discipline as it may impact on the generally accepted elements of just cause.

In this instance, it appears that Officer Boyer, the grievant herein, was a victim of his own professional enthusiasm. In the interest of productivity (900 arrests in less than two years) he cut some clerical corners. However, there was no showing that any of his erroneous clerical entries were created for personal gain.

Under ordinary circumstances, in the proverbial widget making of the private sector, record keeping is less vital and inaccuracy is not likely to end in a devastating result where the guilty escapes conviction or the innocent is inadvertently framed during prosecution. The initial clerical reporting documents in law enforcement are frequently the foundation of the case. The who what and where of the arrest may not be improvised. The initial documents may need to be relied upon as evidence perhaps many months after the arrest. This fact is so elementary and obvious that it requires no special training or forewarning.

However, the internal investigation revealed a flaw in the system that permitted the grievant herein to repeat his improper documentation for such an extended period without detection. Although apparently, this flaw has since been corrected, it may have given the grievant a false sense of security that his repeated deviation of accuracy is not a major transgression.

Therefore, the twenty-day disciplinary suspension issued to the grievant is found to be too severe under the foregoing circumstances. The Union correctly argued herein that the unanimous recommendations of the PBI, the entity established to hear the evidence in the case internally and recommend punishment if any, recommended unanimously a six-day suspension. As a result, in the absence of additional evidence, the Commissionaire's increase of the penalty herein to a twenty-day suspension without pay must be found excessive.

However, some discipline is appropriate since the grievant obviously elected to deliberately deviate from established rules of conduct in the routine performance of his duties. He demonstrated that he knew what was required since almost half of his documentation, during the period in question, was accurate.

Therefore, having thoroughly considered all the evidence including the arguments and allegations of both parties at the hearing before me and in their extensive post-hearing briefs, I have determined for the above stated reasons that

the twenty-day (20) disciplinary suspension of P/O Andre Boyer PR# [REDACTED] was not for just cause. His penalty shall be reduced to a six-day (6) suspension without pay as unanimously recommended by the PBI and I make the following Award:

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

AWARD

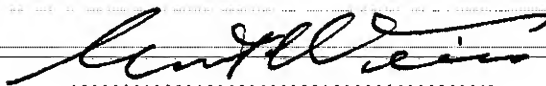
CITY OF PHILADELPHIA, PA

Docket No. 14 390 01529 10 P/O Andre Boyer PN# [REDACTED] 20-Day Suspension
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The undersigned arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above parties, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

For the above stated reasons, the twenty-day disciplinary suspension of P/O Andre Boyer PN# [REDACTED] in August 2010 was not for just cause. The suspension shall be reduced to a six-day disciplinary suspension.

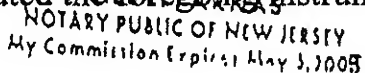
The City is hereby directed to reimburse him the fourteen days of lost salary and expunge from his record any reference to the twenty-day suspension. Additionally, as requested, I hereby retain jurisdiction for the sole purpose of implementing this Award.

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ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY
COUNTY OF: SOMERSET

On this 27th day of July, 2011, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.


NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 3, 2008